

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

TRI-STATE CARBONIC, LLC,)	
)	
Plaintiff,)	Case No.
)	4:13-cv-00047-RLY-DML
)	
v.)	
)	
AIR LIQUIDE INDUSTRIAL U.S. LP,)	
)	
Defendant.)	

**AIR LIQUIDE INDUSTRIAL U.S. LP's
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Air Liquide Industrial U.S. LP ("ALIUS"), for its Answer and Affirmative Defenses to Plaintiff Tri-State Carbonic, LLC's ("Tri-State") Complaint, states the following:

ANSWER

1. ALIUS admits that a copy of a contract is attached as Exhibit A to the Complaint and further states that the terms of the contract speak for themselves and do not require a response. ALIUS denies all remaining allegations of Paragraph 1.

2. ALIUS denies the allegations of Paragraph 2.

3. ALIUS denies the allegations of Paragraph 3.

WHEREFORE, ALIUS respectfully requests that the Court enter judgment in ALIUS's favor and award ALIUS its costs and all other appropriate relief.

AFFIRMATIVE DEFENSES

ALIUS asserts the following affirmative defenses against the Complaint:

1. The Complaint fails to state a claim upon which relief can be granted.
2. Tri-State's claim is barred by an applicable statute of limitation.
3. Tri-State's claim is barred by the equitable doctrines of laches, estoppel, or accord and satisfaction.
4. The contract identified in the Complaint, or some part thereof, is unenforceable, inapplicable, or invalid.
5. Tri-State committed a material breach, relieving ALIUS of any duty to perform.
6. Tri-State has not been damaged as a result of any alleged breach by ALIUS.
7. Damages sought by Tri-State, if any, occurred outside of the term of the contract identified in the Complaint.
8. Tri-State's damages, if any, arise from Tri-State's own conduct or the conduct of its agents, representatives, and/or consultants.
9. Tri-State has failed to mitigate its damages, if any.
10. Tri-State's damages, if any, are limited by the express terms of the contract.
11. Tri-State's damages, if any, occurred as the result of an unrelated, pre-existing, or subsequent condition unrelated to ALIUS's conduct.

12. ALIUS reserves the right to assert additional defenses as they become known through discovery.

WHEREFORE, ALIUS respectfully requests that the Court enter judgment in its favor and award ALIUS its costs and all other appropriate relief.

Dated: May 1, 2013

Respectfully submitted,

s/ Frederick D. Emhardt

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CERTIFICATE OF SERVICE

I certify that on the 1st day of May, 2013, a copy of the foregoing was filed electronically and served by first class mail on counsel for the plaintiff:

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s/ Frederick D. Emhardt _____